

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Quincy Cornelius Morman, #23408-18)	C/A No. 9:04-1567-JFA-GCK
)	
Plaintiff,)	
v.)	ORDER
)	
Dan Dove, Warden of FCI Edgefield;)	
S. Gibson, Counselor at FCI Edgefield;)	
NFN Watt, Case Manager at FCI Edgefield;)	
D. Barberena, Lieutenant at FCI Edgefield;)	
)	
Defendants.)	
<hr style="width: 40%; margin-left: 0;"/>)	

This matter is before the court for review of the Magistrate Judge's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

The *pro se* plaintiff is a federal prisoner serving a 360-month sentence for bank robbery. He initiated this civil rights action against the defendants alleging that the defendants erroneously found him to have committed the act of “refusing an order,” and was terminated from his prison employment at Unicor as a sanction. The plaintiff seeks lost wages and compensation for emotional distress.

In accordance with established procedures in this District, the case was referred to a Magistrate Judge for pretrial handling. On September 14, 2004, the defendants filed a motion for summary judgment. The plaintiff was advised of the necessity to respond to the motion pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975). The plaintiff eventually filed a response and the defendants replied.

In a detailed and comprehensive Report and Recommendation filed with the court on May 18, 2005, the Magistrate Judge suggests that the action be construed as one under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Magistrate Judge also notes that the defendants’ motion to dismiss or alternatively for summary judgment should be considered one for summary judgment. This court finds the Magistrate Judge’s recommended construction of the action and motion proper. In addition, the 32-page Report sets forth in detail the relevant facts involved in this case, and the court incorporates those facts as described in the Report without a full recitation.

Within the time limits set out in the Local Rules for this District, the plaintiff objected to the Report and Recommendation. In addition, on June 6, 2005, the plaintiff filed a reply to the defendants’ motion for summary judgment (which the defendants filed on September

14, 2004).

In his objections to the Report, the plaintiff merely reasserts his position expressed in his opposition to the defendants' motion for summary judgment and recites the same factual allegations made in his complaint. The court finds such objections to be unpersuasive.

After carefully reviewing the applicable law, the record in this case, the Report and Recommendation, and the plaintiff's objections thereto, the court concludes that the Magistrate's well-reasoned and detailed conclusion is correct.

Accordingly, the objections are overruled, the Report and Recommendation is incorporated herein by reference, and the defendants' motion for summary judgment is granted.

IT IS SO ORDERED.

June 24, 2005
Columbia, South Carolina

s/ Joseph F. Anderson, Jr
United States District Judge